

Notice of Allowability

Application No.

09/963,613

Examiner

Fred Ferris

Applicant(s)

GANZERT, JOHANNES

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 30 June 2006.
2. ☒ The allowed claim(s) is/are 3-16, 23, 24, 27, and 32-34 (renumbered as 1-20).
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 09152006.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Fred Ferris
FRED FERRIS
PRIMARY EXAMINER
TC 2100

DETAILED ACTION

1. *A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 30 June 2006 has been entered. By this amendment, applicants have now cancelled claims 1, 2, 17-22, 25, 26, and 28-31. Claims 3-16, 23, 24, 27, and 32-34 remain pending in this application.*

EXAMINER'S AMENDMENT

2. *An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.*

Authorization for this examiner's amendment was given in a personal interview with Greg Hsu on 13 September 2006 (See: Interview Summary)

Amend claims 10 and 32 as follows:

*In line 1 of the preamble to claims 10 and 32 **delete** the word "a" before the words "program code" and **insert** the phrase "instrument firmware".*

The first line of the preamble claim 10 should now read as:

"A system for distributing instrument firmware program update, comprising:"

The first line of the preamble claim 32 should now read as:

“A method for distributing instrument firmware program update to a plurality of..”

Response to Arguments

3. *Applicant's arguments filed 30 June 2006 have been fully considered and are persuasive. The previous 103(a) rejection of claims 3-16, 23, 24, 27, and 32-34 is withdrawn in view of the amendment to the claims and supporting arguments filed 30 June 2006, and the examiners' amendment of record responsive to the applicant initiated interview conducted 13 September 2006.*

Allowable Subject Matter

4. *Claims 3-16, 23, 24, 27, and 32-34 are allowed over the prior art of record.*

The following is an examiner's statement of reasons for allowance:

Applicants are disclosing a method and system for distributing program code to multiple measuring instruments that are coupled to a control computer via a first bus and a central computer central computer via a second bus where the central computer is coupled to storage-medium and a network and a first control computer is coupled to two different measuring instruments. This has been disclosed in the prior art of record.

While these elements are individually disclosed in the prior art, the prior art of record does not meet the conditions as suggested in MPEP section 2132, namely:

*"The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an **ipsissimis verbis** test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)."*

In particular, the prior art does not disclose the specific combination of system elements and sequence method steps relating to distributing a firmware update among instruments inclusive of a central computer receiving the firmware updates, control computers connected to the central computer including a first computer, where each instrument is coupled to only one control computer and the first computer is coupled to at least two different instruments, with the central computer transferring firmware updates to the control computer including the first computer, and where when the first computer receives the firmware update transfer is made to only one of the two different instruments coupled to the first computer without transferring the firmware update to another of the instruments, as now recited in independent claims 10, and 32. Here, the program code is understood to be instrument firmware as now recited in the preamble of claims 10 and 32 and defined in applicants' specification in paragraphs 0007 and 0011.

It is further noted that the examiner has given patentable weight to the preamble of independent claim 32 since, in this case, the preamble limits the body of the claims.

MPEP 2163 recites the following:

"The examiner should evaluate each claim to determine if sufficient structures, acts, or functions are recited to make clear the scope and meaning of the claim, including the weight to be given the preamble. See, e.g., Bell Communications Research, Inc. v.

Vitalink Communications Corp., 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995) (“[A] claim preamble has the import that the claim as a whole suggests for it.”); Corning Glass Works v. Sumitomo Elec. U.S.A., Inc., 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989) (The determination of whether preamble recitations are structural limitations can be resolved only on review of the entirety of the application “to gain an understanding of what the inventors actually invented and intended to encompass by the claim.”).”

In this case, the preamble recitation of the method for distributing an instrument firmware program update among measuring instruments coupled to one control computer via a first bus and a central computer via a second bus is further limited in the body of the claim as supplying firmware update among instruments inclusive of a central computer receiving the firmware updates, control computers connected to the central computer including a first computer, where each instrument is coupled to only one control computer and the first computer is coupled to at least two different instruments, with the central computer transferring firmware updates to the control computer including the first computer, and where when the first computer receives the firmware update transfer is made to only one of the two different instruments coupled to the first computer without transferring the firmware update to another of the instruments, as noted above.

The closest prior art uncovered during examination teaches certain limitations of the claimed invention as follows:

- U.S. Patent 4,397,021 issued to Lloyd et al.: teaches a method and system for multiple test (measurement) instruments inclusive of a central control processor that is coupled via a second bus with multiple control computers each coupled only to the measuring (test) instrument via a first bus. Lloyd further teaches the central computer being coupled to a storage medium and discloses a test (measurement) instrument

*architecture where each measuring instrument is respectively coupled to only one of at least one control computer. However, Lloyd does not explicitly disclose the specific combination of system elements and sequence method steps relating to distributing a **firmware update among instruments** inclusive of a central computer receiving the firmware updates, control computers connected to the central computer including a first computer, where each instrument is coupled to only one control computer and the first computer is coupled to at least two different instruments, with the central computer transferring firmware updates to the control computer including the first computer, and where when the first computer receives the firmware update transfer is made to only one of the two different instruments coupled to the first computer without transferring the firmware update to another of the instruments, as now recited in independent claims 10, and 32.*

*- "Developing Distributed GPIB Test Systems Using GPIB-ENET/100 and Existing Ethernet Networks" Humphrey et al: teaches the well-known GPIB IEEE 488 instrument bus facilitating multiple (more than one) test instruments coupled to a single instrument processor or microprocessor including updating firmware via a firmware update utility from the controller or over the internet. However, Humphrey further does not explicitly disclose the specific combination of system elements and sequence method steps relating to distributing a **firmware update among instruments** inclusive of a central computer receiving the firmware updates, control computers connected to the central computer including a first computer, where each instrument is coupled to only one control computer and the first computer is coupled to at least two different*

instruments, with the central computer transferring firmware updates to the control computer including the first computer, and where when the first computer receives the firmware update transfer is made to only one of the two different instruments coupled to the first computer without transferring the firmware update to another of the instruments, as now recited in independent claims 10, and 32.

The features noted above therefore render the claimed invention non-obvious over the prior art of record. Dependent claims 3-9, 11-16, 23, 24, 27, 33, and 34 are deemed allowable as depending either directly or indirectly from independent claims 10, and 32.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

5. *Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Ferris whose telephone number is 571-272-3778 and whose normal working hours are 8:30am to 5:00pm Monday to Friday. Any inquiry of a general nature relating to the status of this application should be directed to the group receptionist whose telephone number is 571-272-3700. If attempts to reach the*

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examiner by telephone are unsuccessful, the examiner's supervisor, Kamini Shah can be reached at 571-272-2279. The Official Fax Number is: (703) 872-9306

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September 13, 2006



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